

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 635**

[Docket No. 040506142-4142-01; I.D. 042204B]

RIN 0648-AS07

Atlantic Highly Migratory Species (HMS) Fisheries; Vessel Monitoring System (VMS) Requirement; Effective Date for Atlantic Shark Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes to establish an effective date for the requirement to have a NOAA-approved VMS unit installed and operating on vessels with directed shark limited access permits (LAPs) and with gillnet or bottom longline gear on board. VMS will aid in the enforcement of time/area closures.

DATES: Public comments must be received by July 2, 2004.

ADDRESSES: You may submit comments, identified by Docket Number 040506142-4142-01 or RIN Number 0648-AS07, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- E-mail: 042204B.issues@noaa.gov. Include the following document identifier: "RIN 0648-AS07 and I.D. 042204B" in the subject line of the message.

- Fax: 301-713-1917.

- Mail: HMS Management Division, 1315 East-West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope "Comments on Proposed VMS Requirement".

Comments regarding the collection-of-information requirements contained in this rule should be sent to the HMS Management Division at the address noted above and to the Office of Management and Budget (OMB) by e-mail to David_Rostker@omb.eop.gov or by fax to (202) 395-7285.

To obtain copies of the list of NOAA-approved VMS mobile transmitting units and NOAA-approved VMS communications service providers, write to the NMFS Office for Law Enforcement (OLE), 8484 Georgia Avenue, Suite 415, Silver Spring, MD 20910.

For copies of Amendment 1 to the Fisheries Management Plan for Atlantic

Tunas, Swordfish, and Sharks or of its implementing regulations please write to Highly Migratory Species (HMS) Management Division (F/SF1), Office of Sustainable Fisheries, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Copies are also available on the internet at: <http://www.nmfs.noaa.gov/sfa/hms/>.

FOR FURTHER INFORMATION CONTACT: For additional information regarding the proposed effective date specified in this document, contact Mike Clark, Chris Rilling, or Karyl Brewster-Geisz, phone 301-713-2347 or fax 301-713-1917.

For a current listing of NOAA-approved VMS units, contact Mark Oswell, phone 301-427-2300, fax 301-427-2055.

For questions regarding VMS installation and activation checklists, contact Jonathan Pinkerton, phone 301-427-2300, fax 301-427-2055.

An installation checklist, and relevant updates are available at the OLE website: <http://www.nmfs.noaa.gov/ole/vms.html>.

SUPPLEMENTARY INFORMATION: On December 24, 2003, NMFS issued a final rule (68 FR 74746) requiring the installation of a NOAA-approved VMS unit on: (1) all commercial vessels issued a directed shark LAP with bottom longline gear on board that are located between 33°00' and 36°30' N. latitudes between January 1 and July 31 and (2) all commercial vessels issued a directed shark LAP with gillnet gear on board during the right whale calving season (November 15 - March 31), regardless of location. As specified in the final rule, the requirement to have VMS on board coincides with the start of time/area closures for the right whale calving season (effective as of November 15, 2004, for § 635.69(a)(3)) and the mid-Atlantic time/area closure (effective as of January 1, 2005, for § 635.69(a)(2)) for shark gillnet and bottom longline vessels, respectively.

The December 24, 2003, (68 FR 74746) VMS requirements were stayed pending the publication of a type-approval notice which was published in the **Federal Register** on April 15, 2004 (69 FR 19979). The type-approval notice describes the relevant features of each unit for use by vessels engaged in HMS fisheries. The units may be used by vessels participating in any HMS fishery including vessels with pelagic longline gear on board.

This proposed rule does not revise any other requirement or management measure published in the December 24, 2003, final rule, but would establish the effective date for the VMS requirement

as 30 days after publication of any final rule associated with this rulemaking.

Classification

This action is published under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. The Assistant Administrator for Fisheries previously determined that the implementation of a VMS program in the shark gillnet and bottom longline fisheries is necessary to monitor and enforce closed areas implemented to reduce bycatch.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed action would not have a significant economic impact on a substantial number of small entities. This proposed rule would impact approximately 13 vessels, all of which are considered small entities. As required under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) for the VMS requirement in draft Amendment 1 and its proposed rule (68 FR 45196, August 1, 2003) and prepared a Final Regulatory Flexibility Analysis (FRFA) for the final rule, (68 FR 74746, December 24, 2003). Economic impacts of the VMS requirement were addressed in those analyses. Establishing an effective date will not result in any further economic impacts. NMFS has certified that the preparation of an IRFA, specific to this proposed rule was not necessary.

Pursuant to the procedures established to implement Executive Order 12866, the Office of Management and Budget has determined that this proposed rule is not significant.

NMFS notified all states, consistent with the Coastal Zone Management Act, of the VMS requirement during the rulemaking for Amendment 1 of the HMS FMP. No states indicated that the VMS requirement is inconsistent with their coastal zone management programs. Thus, this proposed action is consistent to the maximum extent practicable with the enforceable policies of those Atlantic, Gulf of Mexico, and Caribbean states and territories that have approved coastal zone management programs.

VMS are intended to aid in the enforcement of time/area closures and thereby reduce interactions with endangered species. The environmental impacts of the VMS requirement were analyzed during the development of Amendment 1 to the HMS FMP and the December 24, 2003 (68 FR 74746) final rule. Establishing an effective date for

this requirement is not expected to increase endangered species or marine mammal interaction rates beyond that considered permissible in the October 29, 2003, Biological Opinion on the continued operation of Atlantic shark fisheries under the FMP and Draft Amendment 1 to the HMS FMP issued by NMFS Office of Protected Resources.

This proposed rule establishing the effective date on the VMS requirement refers to collection-of-information requirements subject to the Paperwork Reduction Act (PRA) which have been approved by OMB under control number 0648-0483. The public's reporting burden for this collection of information is estimated at: 4 hours for the installation of a VMS, 5 minutes for the completion of a VMS certification statement, 2 hours per year for VMS maintenance, and < 1 second for an automated position report from a VMS.

These estimates include the time for: reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information requirements. Written

comments regarding these burden estimates or any other aspect of these data collection requirements, including suggestions for reducing the burden must be sent to NMFS and OMB (see **ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to, a penalty for failure to comply with a collection of information requirement of the PRA unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: May 12, 2004.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 635 is proposed to be amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for 50 CFR 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.* 16 U.S.C. 1801 *et seq.*

2. In § 635.69, paragraphs(a)(2) and (a)(3) are revised to read as follows:

§ 635.69 Vessel monitoring systems.

(a) * * *

(2) As of January 1, 2005, whenever a vessel issued a directed shark LAP, is away from port with bottom longline gear on board, is located between 33°00' N. lat. and 36°30' N. lat., and the mid-Atlantic shark closed area is closed as specified in 635.21(d)(1); or

(3) As of November 15, 2004, whenever a vessel, issued a directed shark LAP, is away from port with a gillnet on board during the right whale calving season specified in the Atlantic Large Whale Take Reduction Plan in § 229.32(f) of this title.

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[FR Doc. 04-11226 Filed 5-17-04; 8:45 am]

BILLING CODE 3510-22-S